

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RAD DIVERSIFIED REIT, INC.,

Plaintiff,

v.

**WILMINGTON SAVINGS FUND
SOCIETY, FSB, NOT IN ITS
INDIVIDUAL CAPACITY BUT SOLELY
AS TRUSTEE FOR IBIS HOLDINGS A
TRUST; AND FAY SERVICING, LLC,**

Defendants.

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Civil Action No. 4:25-cv-00254

**JOINT MOTION TO STAY OR CONTINUE INITIAL PRETRIAL AND SCHEDULING
CONFERENCE AND PRETRIAL DEADLINES**

Pursuant to Rules 6 and 16 of the Federal Rules of Civil Procedure, Plaintiff RAD Diversified REIT, Inc. (“Plaintiff”) and Defendants Wilmington Savings Fund Society, FSB, Not in its Individual Capacity but Solely as Trustee for IBIS Holdings A Trust (“Wilmington as Trustee”), and Fay Servicing, LLC (“Fay”) (collectively, “Defendants”) (collectively, the “Parties”) jointly move to stay or continue the deadlines in this case, including Fay’s answer deadline, Plaintiff’s deadline to respond to Wilmington as Trustee’s Motion to Dismiss, the Parties’ deadline to produce Rule 26(a) initial disclosures, the Parties’ May 13, 2025 deadline to complete and file the Joint Discovery/Case Management Plan, and the May 23, 2025 Initial Pretrial and Scheduling Conference (the “Motion”). In support of this Motion, the Parties state as follows:

I. NATURE AND STAGE OF THE PROCEEDING

This matter involves foreclosure of a residential property that is part of an investment portfolio containing many properties, which is located at 18203 Maple Arbor Court, Cypress,

Texas 77429 (the “Property”). On November 1, 2024, Plaintiff filed its Original Petition and Application for *Ex Parte* Temporary Restraining Order and Temporary Injunction (the “Complaint”) in the 189th Judicial District Court of Harris County, Texas, in an action styled *RAD Diversified REIT, Inc. v. Wilmington Savings Fund Society, FSB, Not in its Individual Capacity but Solely as Trustee for IBIS Holdings A Trust; and Fay Servicing, LLC*, under Cause No. 2024-76594.¹ On November 1, 2024, the state court issued an *Ex Parte* Temporary Restraining Order Enjoining Substitute Trustee Foreclosure Sale (“TRO”), setting Plaintiff’s application for a temporary injunction for a hearing on November 12, 2024.²

On January 21, 2025, Wilmington as Trustee removed the state court action to this Court based on diversity jurisdiction, arguing that Plaintiff improperly joined Fay to the suit.³ Following the removal of the lawsuit on January 22, 2025, the Court ordered the Parties to file a Joint Discovery/Case Management Plan by May 13, 2025, and set an Initial Pretrial and Scheduling Conference on May 23, 2025, at 3:15 p.m.⁴

On January 28, 2025, Wilmington as Trustee filed a Motion to Dismiss, and Plaintiff’s deadline to respond to the Motion to Dismiss is on February 18, 2025.⁵ Fay did not join the Motion to Dismiss because Fay maintains that it was improperly joined to this lawsuit.

The Parties promptly conferred and agreed to explore settlement possibilities.

II. ARGUMENTS AND AUTHORITIES

Generally, when an act may or must be done within a specified time, the Court may, for good cause, extend the time with or without motion or notice if the Court acts, or if a request is

¹ Doc. No. 1-4 at pp. 2–14.

² Doc. No. 1-5.

³ Doc. No. 1.

⁴ Doc. No. 4.

⁵ Doc. No. 6.

made, before the original time or its extension expires. FED. R. CIV. P. (6)(b)(1)(A). The Court maintains broad discretion to stay proceedings and control its own docket for efficiency's sake. FED. R. CIV. P. 16(b)(4); *Geiserman v. MacDonald*, 893 F.2d 797, 790 (5th Cir. 1990) (acknowledging that courts are vested with “broad discretion to preserve the integrity and purpose of the pretrial order”).

The Parties jointly request to stay or continue the deadlines in this case, including Fay's answer deadline, Plaintiff's deadline to respond to Wilmington as Trustee's Motion to Dismiss, the Parties' deadline to produce Rule 26(a) initial disclosures, and the Parties' May 13, 2025 deadline to complete and file the Joint Discovery/Case Management Plan. The Parties further request that the Order for Conference and Disclosure of Interested Parties be vacated.⁶ Good cause exists to grant this Motion because the Parties have agreed to explore the potential for a resolution of this matter without the further expenditure of costs and fees and confer in good faith regarding discovery and settlement. Indeed, the Parties discussed the potential to pursue a global settlement of this case and other related cases filed by Plaintiff and other related entities.⁷ For instance, in the case styled and numbered as *DHI Holdings, LP; and Brandon Mendenhall v. U.S. Bank National Association as Trustee of Spartan Funding I Trust; and Fay Servicing, LLC*, under Civil Action No. 4:24-cv-03914 in the United States District Court for the Southern District of Texas – Houston Division (Eskridge, J.) (the “First Related Case”), counsel for the parties to the Related Case—which are the same counsel for the Parties in this action—notified Judge Eskridge about the potential for settlement, and the Court abated the Scheduling and Docket Control Order and the

⁶ Doc. No. 4.

⁷ Brandon Mendenhall guaranteed the commercial promissory notes for Plaintiff in this case and another entity named DHI Holdings, LP in other pending cases. The cases currently pending in the Southern District of Texas – Houston Division include: (1) Civil Action No. 4:24-cv-03914 and (2) Civil Action No. 4:24-cv-04811. The cases currently pending in Harris County District Courts and will be removed to the federal district court include: (3) Cause No. 2024-83279, (4) Cause No. 2024-83290, and (5) Cause No. 2025-00281.

pending dispositive motion to allow the parties to engage in further settlement discussions. There, Judge Eskridge ordered the parties to file a status report notifying the court of the status of the parties' global efforts to resolve as many cases as possible and advised counsel to notify the Court of his order.⁸

Similarly, in the case styled and numbered as *RAD Diversified REIT, Inc. v. Citibank, N.A., as Trustee on Behalf of MAV 1; and Fay Servicing, LLC*, under Civil Action No. 4:24-cv-04811 in the United States District Court for the Southern District of Texas – Houston Division (Bennett, J.) (the “Second Related Case”), counsel for the parties to the Second Related Case—which are the same counsel for the Parties in this action—notified Judge Bennett about the potential for settlement, and, on February 3, 2025, the Court stayed certain pretrial deadlines and vacated the Order for Conference and Disclosure of Interested Parties to allow the parties to engage in further settlement discussions.⁹

Thus, a stay or continuance of these deadlines in this lawsuit will preserve the Parties' and the Court's resources. The Parties will also provide the Court with a joint status report by April 4, 2025, if the Parties have not resolved the dispute by this date.

The relief requested in this Motion is not sought for purposes of delay, but so that justice may be done. The relief requested in this Motion will not prejudice either party or unduly delay the proceedings in this action.

⁸ The Parties respectfully request that the Court take judicial notice of the January 10, 2025 Minute Entry Order docketed at No. 23 in the First Related Case, which is attached hereto as Exhibit A. See FED. R. EVID. 201(b).

⁹ The Parties respectfully request that the Court take judicial notice of the Order Granting Joint Motion to Stay or Continue Initial Pretrial and Scheduling Conference and Pretrial Deadlines docketed at No. 16 in the Second Related Case, which is attached hereto as Exhibit B. See FED. R. EVID. 201(b).

III. CONCLUSION

For these reasons, the Parties respectfully request that the Court grant this Motion and enter the proposed order submitted herewith, staying Fay's answer deadline, Plaintiff's deadline to respond to Wilmington as Trustee's Motion to Dismiss, the Parties' deadline to produce Rule 26(a) initial disclosures, and the Parties' May 13, 2025 deadline to complete and file the Joint Discovery/Case Management Plan and vacating the Order for Conference and Disclosure of Interested Parties (Doc. No. 4) until further order of this Court and ordering the Parties to submit a joint status report by April 4, 2025. The Parties further request all such other and further relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

/s/ Helen O. Turner

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CERTIFICATE OF CONFERENCE

I hereby certify that, on February 7, 2025, I conferred with counsel for Plaintiff regarding the relief requested in this Motion, and he is not opposed to this Motion.

/s/ Helen O. Turner

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on February 7, 2025, a true and correct copy of the foregoing document was delivered to the following counsel of record *via CM/ECF, CMRRR, and/or email* consistent with the Federal Rules of Civil Procedure.

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